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23 UNITED STATES DISTRICT COURT
24 EASTERN DISTRICT OF CALIFORNIA

25 U.S. EQUAL EMPLOYMENT
26 OPPORTUNITY COMMISSION,

27 Plaintiff,

28 and

ARYAN RAHIMI,

Plaintiff-Intervenor,

vs.

CAPPO MANAGEMENT XXIX, INC., d/b/a
HARROLD FORD, and VICTORY
AUTOMOTIVE GROUP, INC.

Defendants.

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Case No.: 2:20-CV-02245-MCE-KJN

**JOINT RULE 26(F) DISCOVERY PLAN &
ORDER**

1 Plaintiff U.S. Equal Employment Opportunity Commission (EEOC), Plaintiff-Intervenor
2 Aryan Rahimi (Rahimi), and Defendants Cappo Management XXIX, Inc. (Cappo) and Victory
3 Automotive Group, Inc. (Victory) (collectively, Defendants), submit this Joint Rule 26(f) Discovery
4 Plan & Order pursuant to the Court's Initial Scheduling Order (ECF 3).

5 **I. JURISDICTION & VENUE**

6 This Court has jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This
7 action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act
8 of 1990 (ADA), 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of
9 Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e-5(f)(1) and (3), and pursuant
10 to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

11 On April 4, 2021, Rahimi intervened in the action, bringing claims under the ADA and
12 California Fair Employment and Housing Act (FEHA), Cal. Gov't Code §§ 12920, 12940. The
13 Court has supplemental jurisdiction over Rahimi's state claims pursuant to 28 U.S.C. § 1367(a).
14 Defendants filed an Answer to the Plaintiff's Complaint on March 3, 2021 (ECF 8), and an Answer
15 to the Plaintiff-Intervenor's Complaint on April 26, 2021. (ECF 19) On May 11, 2021, Rahimi filed
16 a First Amended Complaint in Intervention to assert additional claims under FEHA. (ECF 21).
17 Defendants do not oppose subject matter jurisdiction or venue as they relate to Plaintiff or Plaintiff-
18 Intervenor's claims.

19 **II. LEGAL ISSUES**

20 A. Whether Defendants engaged in unlawful employment practices in violation of the
21 ADA and/or FEHA by depriving Rahimi of equal employment opportunities and otherwise
22 adversely affecting her status as an employee because of her actual or perceived impairment when
23 they fired her after she took medical leave;

24 B. Whether Defendants were joint employers of Rahimi;

25 C. Whether Rahimi is entitled to compensatory damages for emotional distress, pain and
26 suffering, other incidental expenses incurred, backpay, lost benefits and other damages; and,

27 D. Whether Plaintiff is also entitled to injunctive relief necessary to eradicate the effects
28 of discrimination and to prevent future discrimination.

1 **III. DISCOVERY PLAN**

2 **A. What changes should be made in the timing, form, or requirement for**
3 **disclosures under Rule 26(a), including a statement of when initial disclosures**
4 **were made or will be made.**

5 In accordance with the parties' stipulation (ECF No. 17), the Court ordered that the parties
6 exchange Initial Disclosures on May 17, 2021, pursuant to the Northern District of California's General
7 Order No. 71 (Initial Discovery Protocols for Employment Cases Alleging Adverse Action) (ECF No.
8 20).

9 **B. The subjects on which discovery may be needed, when discovery should be**
10 **completed, and whether discovery should be conducted in phases or be limited to**
11 **or focused on particular issues.**

12 The parties agree to narrow discovery in preparation for early ADR by limiting initial
13 discovery to written discovery. *See* paragraph E, below. Without waiving any rights to challenge
14 discoverability, admissibility, or otherwise, the parties anticipate that discovery will be on those
15 subjects related to Plaintiff's and Plaintiff-Intervenor's claims and damages, and Defendants'
16 defenses, including, but are not limited to the following:

- 17 1. Defendants' decision to terminate Rahimi;
- 18 2. The application of Defendants' leave policies;
- 19 3. Rahimi's status as a qualified individual with a disability;
- 20 4. The interactive process between Rahimi and Defendants;
- 21 5. Defendants' relevant company policies, including HR and EEO policies;
- 22 6. The relevant personnel records of the officials involved in Rahimi's
23 termination, including their disciplinary records;
- 24 7. The training Defendants provided to officials involved in Rahimi's
25 termination, including training related to EEO laws and policies;
- 26 8. The corporate relationship between Cappo and Victory; and
- 27 9. Rahimi's damages.

28 **C. Any issues about disclosure, discovery, or preservation of electronically stored**
information, including the form or forms in which it should be produced.

1. Preservation of ESI

1 The parties met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and
2 proportionate steps taken to preserve potentially relevant ESI. The parties continue to explore the
3 existence of custodians and systems, such as those used for instant messaging. The parties will
4 continue these discussions in anticipation of seeking a Stipulated Order regarding ESI within thirty
5 (30) days.

6 **2. Discovery and Form of Production**

7 The parties will conduct, serve, and respond to discovery in accordance with the Federal
8 Rules of Civil Procedure and Local Rules. Discussions relating to what search and review
9 methodology each party will employ for potentially relevant ESI are ongoing. The EEOC provided
10 Defendants with its written specifications to produce discovery in accordance with industry
11 standards for the Relativity platform. Defendants requested that discovery be produced in the form
12 of PDFs. The parties are meeting and conferring concerning the form of Defendants' ESI collection
13 and production.

14 **D. Any issues about claims of privilege or of protection as trial-preparation**
15 **materials, including – if the parties agree on a procedure to assert these claims**
16 **after production – whether to ask the court to include their agreement in an**
order under Federal Rule of Evidence 502.

17 **1. Preservation of ESI**

18 The parties agree and stipulate that the following categories of documents shall be excluded
19 from privilege logs:

20 (a) Attorney-client privilege:

- 21 (1) Communications between Smith Dollar PC attorneys and
22 Defendants that post-date the filing of the Complaint
23 concerning Rahimi (ECF No. 1);
24 (2) Communications between Defendants' in-house counsel (or
25 amongst its in-house counsel) and Defendants' management
26 personnel that post-date the filing of Rahimi's November 22,
27 2018 Charge of Discrimination;
28 (3) Communications between Rahimi and her attorney(s) that post-

1 date the filing of Rahimi's November 22, 2018 Charge of
2 Discrimination;

3 (4) Communications between EEOC employees and Charging
4 Party or her attorney(s) after the EEOC issued the Letter of
5 Determination on August 6, 2019; and,

6 (5) Communications between or amongst EEOC enforcement (i.e.
7 investigation) staff and EEOC legal staff that post-date the
8 filing of Rahimi's November 22, 2018 Charge of
9 Discrimination.

10 (b) Attorney work product:

11 (1) Documents created by Smith Dollar PC attorneys and/or
12 Defendants' in-house counsel that post-date the filing of
13 Rahimi's November 22, 2018 Charge of Discrimination;

14 (2) Documents created by Rahimi's attorney(s) that post-date the
15 filing of Rahimi's November 22, 2018 Charge of
16 Discrimination; and,

17 (3) Documents created by EEOC attorneys that post-date the filing
18 of Rahimi's November 22, 2018 Charge of Discrimination.

19 **2. Fed. R. Evid. 502(d) Inadvertent Productions**

20 The parties also agreed to seek a Fed. R. Evid. 502(d) Stipulation and Order, based on the
21 Northern District of California's Model Order, to address inadvertent productions, which the parties
22 can incorporate into a Joint E-Discovery Order. The parties anticipate seeking this order within 30
23 days.

24 **E. What changes should be made in the limitations on discovery imposed under**
25 **these rules or by local rule, and what other limitations should be imposed.**

26 The parties agree that it would be beneficial to engage in early ADR through private
27 mediation after targeted discovery. The parties agree to limit discovery to written discovery until the
28 completion of ADR. The parties do not currently anticipate seeking other discovery limitations.

1 The parties agree to meet and confer, and attempt to achieve a joint resolution, regarding all
2 discovery disputes before seeking judicial intervention.

3 The parties continue to meet and confer concerning the collection and format of ESI
4 produced in discovery. There are no current discovery disputes.

5 **F. Any other orders that the court should issue under Rule 26(c) or under Rule**
6 **16(b) and (c).**

7 None at this time.

8 **IV. CASE SCHEDULING**

9 The Court's Initial Pretrial Scheduling Order (ECF 3) sets forth deadlines, including for the
10 parties to complete non-expert discovery and to file dispositive motions. The parties calculate the
11 deadlines as follows:

EVENT	DEADLINE
Deadline to complete non-expert discovery	February 16, 2022
Deadline for expert witness disclosures	April 18, 2022
Deadline for rebuttal expert witness disclosures	May 18, 2022
Joint Trial Readiness Report (if no dispositive motions are filed)	June 17, 2022
Dispositive Motions	August 15, 2022

19
20 In addition, the parties propose that the Court set **June 17, 2021**, as the deadline for the
21 parties to amend their pleadings. Good cause exists for extending the last day to amend pleadings,
22 because: 1) the parties continue to meet and confer concerning the claims and/or affirmative
23 defenses alleged in this case, and 2) the proposed new deadline will not affect any other deadlines in
24 the case.

25 The parties also propose that the Court set **August 1, 2022**, as the deadline for the parties to
26 complete expert discovery. Good cause exists for doing so because: 1) the Initial Pretrial Scheduling
27 Order does not currently address this deadline, 2) the proposed deadline will not affect any other
28 deadlines in the case, and 3) this proposed deadline will encourage the parties to complete all expert

1 discovery before dispositive motions, thus avoiding the potential for expert discovery to disrupt the
2 dispositive motion briefing schedule.

3 **V. SETTLEMENT AND ADR**

4 The parties are willing to participate in private mediation following written discovery. The
5 parties anticipate completing private mediation by September 30, 2021.

6 **ORDER**

7 Therefore, the parties hereby stipulate to and request that the Court order the following relief:

- 8 1. The deadline to amend pleadings shall be **June 17, 2021**.
9 2. The deadline to complete expert discovery shall be **August 1, 2022**.

10 Respectfully Submitted,

11
12 Dated: May 17, 2021

/s/ James H. Baker

13 _____
14 James H. Baker
15 Trial Attorney
16 U.S. EQUAL EMPLOYMENT
17 OPPORTUNITY COMMISSION
18 *Attorneys for Plaintiff*

16 Dated: *Authorized on May 17, 2021*

/s/ Elizabeth Zareh

17 _____
18 Elizabeth Zareh
19 ZAREH & ASSOCIATES
20 *Attorneys for Plaintiff-Intervenor*


20 Dated: *Authorized on May 17, 2021*

/s/ Diane Aqui

21 _____
22 Diane Aqui
23 SMITH DOLLAR, PC.
24 *Attorneys for Defendants*

23 IT IS SO ORDERED.

24 Dated: May 28, 2021

25 
26 _____
27 MORRISON C. ENGLAND, JR.
28 SENIOR UNITED STATES DISTRICT JUDGE